

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

JUSTIN GARDNER,

Petitioner,

vs.

STATE OF NEBRASKA,

Respondent.

**8:17CV390**

**MEMORANDUM  
AND ORDER**

This matter is before the court on what the court construes as a motion for reconsideration ([filing no. 8](#)) and a motion for extension ([filing no. 9](#)) filed by Petitioner Justin Gardner. For the reasons set forth below, both motions are denied.

**I. MOTION FOR RECONSIDERATION**

Petitioner asserts that his habeas petition is meritorious and the court's denial of his previous motion for relief from judgment (*see* [filing no. 7](#)) was in error because Petitioner is "challenging a 'judgment of conviction' entered in State of Nebraska v. Gardner, case number: CR16 3314, not case number: CR15 2366." ([Filing No. 8](#).) The habeas petition filed in this case clearly states that the judgment being challenged is "CR15 2366." ([Filing No. 1 at CM/ECF p.1](#).) In any case, Petitioner has filed a separate habeas petition challenging his conviction in "CR16 3314." (*See* 8:18CV46). Accordingly, Petitioner's motion for reconsideration ([filing no. 8](#)) is denied.

**II. MOTION FOR EXTENSION**

Liberally construed, Petitioner asks for an extension of time to file an appeal in this case. ([Filing No. 9 at CM/ECF p.1](#).) Rule 4 of the Federal Rules of Appellate Procedure requires a party to file a notice of appeal within 30 days after

the challenged judgment is entered. [Fed. R. App. P. 4\(a\)\(1\)](#). Rule 4(a)(5) allows a party to move the district court to extend the time to file a notice of appeal if “(a) he moves no more than thirty days after the original thirty day deadline has passed, and (b) he shows good cause.” [Pugh v. Minnesota, 380 Fed. Appx. 558, 559 \(8th Cir. 2010\)](#) (emphasis added). This case was dismissed without prejudice on December 5, 2017, after Petitioner failed to pay the filing fee or submit a motion to proceed in forma pauperis. Petitioner’s motion for an extension of the time to file an appeal ([filing no. 9](#)) is untimely and is, therefore, denied.

IT IS THEREFORE ORDERED that the motion for reconsideration ([filing no. 8](#)) and motion to extend ([filing no. 9](#)) are denied.

Dated this 2nd day of April, 2018.

BY THE COURT:

*s/ Richard G. Kopf*  
Senior United States District Judge